

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY

vs.

BROAN-NUTONE LLC

NO. 2021-03102

rec'd via cert mail
3/23/2021

NOTICE TO DEFEND - CIVIL

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERENCE SERVICE
MONTGOMERY BAR ASSOCIATION
100 West Airy Street (REAR)
NORRISTOWN, PA 19404-0268

(610) 279-9660, EXTENSION 201

PRIF0034
R 10/11

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY

vs.

BROAN-NUTONE LLC

NO. 2021-03102

CIVIL COVER SHEET

State Rule 205.5 requires this form be attached to any document commencing an action in the Montgomery County Court of Common Pleas. The information provided herein is used solely as an aid in tracking cases in the court system. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Name of Plaintiff/Appellant's Attorney: STEVEN J PAYNE, Esq., ID: 90816

Self-Represented (Pro Se) Litigant ☐

Class Action Suit

☐

Yes

☒

No

MDJ Appeal

☐

Yes

☒

No

Money Damages Requested ☒**Commencement of Action:****Amount in Controversy:**

Complaint

More than \$50,000

Case Type and Code

Miscellaneous: _____

Other _____

Other:

SUBROGATION

Supreme Court of Pennsylvania

Court of Common Pleas

MONTGOMERY

County

For Prothonotary Use Only:

Docket No:

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Commencement of Action:

- ☒ Complaint ☐ Writ of Summons
☐ Transfer from Another Jurisdiction

- ☐ Petition
☐ Declaration of Taking

Lead Plaintiff's Name:

NATIONWIDE MUTUAL FIRE INS. CO. A/S/O SAYLOR

Lead Defendant's Name:

BROAN-NUTONE, LLC

Are money damages requested? ☒ Yes ☐ NoDollar Amount Requested: ☐ within arbitration limits
☒ outside arbitration limits (check one)Is this a Class Action Suit? ☐ Yes ☒ NoIs this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: STEVEN J. PAYNE, ESQUIRE

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☒ Other:
 SUBROGATION

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

☐ Employment Dispute:
 Discrimination
☐ Employment Dispute: Other

☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

☐ Zoning Board
☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations
☐ Restraining Order
☐ Quo Warranto
☐ Replevin
☐ Other:

NOTICE

Pennsylvania Rule of Civil Procedure 205.5. (Cover Sheet) provides, in part:

Rule 205.5. Cover Sheet

(a)(1) This rule shall apply to all actions governed by the rules of civil procedure except the following:

- (i) actions pursuant to the Protection from Abuse Act, Rules 1901 et seq.
- (ii) actions for support, Rules 1910.1 et seq.
- (iii) actions for custody, partial custody and visitation of minor children, Rules 1915.1 et seq.
- (iv) actions for divorce or annulment of marriage, Rules 1920.1 et seq.
- (v) actions in domestic relations generally, including paternity actions, Rules 1930.1 et seq.
- (vi) voluntary mediation in custody actions, Rules 1940.1 et seq.

(2) At the commencement of any action, the party initiating the action shall complete the cover sheet set forth in subdivision (e) and file it with the prothonotary.

(b) The prothonotary shall not accept a filing commencing an action without a completed cover sheet.

(c) The prothonotary shall assist a party appearing pro se in the completion of the form.

(d) A judicial district which has implemented an electronic filing system pursuant to Rule 205.4 and has promulgated those procedures pursuant to Rule 239.9 shall be exempt from the provisions of this rule.

(e) The Court Administrator of Pennsylvania, in conjunction with the Civil Procedural Rules Committee, shall design and publish the cover sheet. The latest version of the form shall be published on the website of the Administrative Office of Pennsylvania Courts at www.pacourts.us.

LAW OFFICES

By: Steven J. Payne, Esquire
 Attorney I.D. No. 90816
 1601 Market Street, Suite 1040
 Philadelphia, PA 19103
 (215) 762-9419
Paynes7@nationwide.com

Attorneys for Plaintiff

NATIONWIDE MUTUAL FIRE
 FIRE INSURANCE COMPANY as
 Subrogee of Michael Saylor
 One West Nationwide Blvd.
 Columbus, OH 43215

COURT OF COMMON PLEAS
 OF MONTGOMERY COUNTY

COMPLAINT AND JURY DEMAND

Plaintiff,

v.

BROAN-NUTONE, LLC
 926 W. State Street
 Hartford, WI 53027

Defendant.

CIVIL TERM
 NO.

NOTICE**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

MONTGOMERY COUNTY BAR ASSOCIATION
 LAWYER REFERRAL AND INFORMATION SERVICE
 100 WEST AIRY STREET
 NORRISTOWN, PA 19401
 (610) 279-9660

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Race falta ascantar una comparencia escrita o en o con un abogado y entregar a la corte enforma escrita sus defensas o sus objections a las demandas en contra de su medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usta puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE MONTGOMERY COUNTY BAR
 SERVICIO DE REFERENCIA E INFORMACION LEGAL.
 100 WEST AIRY STREET
 NORRISTOWN, PA 19401
 (610) 279-9660

Law Office of Donna M. DiPietro
 By: Steven J. Payne
 Attorney I.D. # 90816
 1601 Market Street, Suite 1040
 Philadelphia, PA 19103
 (215) 762-9419

Attorneys for Plaintiff

| | | |
|----------------------------|---|----------------------------------|
| NATIONWIDE MUTUAL FIRE | : | COURT OF COMMON PLEAS |
| FIRE INSURANCE COMPANY as | : | OF MONTGOMERY COUNTY |
| Subrogee of Michael Saylor | : | |
| One West Nationwide Blvd. | : | |
| Columbus, OH 43215 | : | COMPLAINT AND JURY DEMAND |
| <i>Plaintiff,</i> | : | |
| v. | : | |
| | : | |
| BROAN-NUTONE, LLC | : | CIVIL TERM |
| 926 W. State Street | : | NO. |
| Hartford, WI 53027 | : | |
| <i>Defendant.</i> | : | |

COMPLAINT

Plaintiff, Nationwide Mutual Fire Insurance Company as subrogee of Michael Saylor, by and through its undersigned counsel, hereby files its Complaint against Defendant Broan-Nutone, LLC, and states as follows:

1. Plaintiff Nationwide Mutual Fire Insurance Company (hereinafter "Nationwide") is an Ohio Corporation, lawfully conducting business in the Commonwealth of Pennsylvania, with its principal place of business at the above-captioned address.

2. At all times relevant, Nationwide provided property insurance to Michael Saylor (hereinafter "Saylor") which provided coverage for his real and personal property at 1832 Derstine Road, Souderton, Montgomery County, Pennsylvania (hereinafter the "subject property").

3. Upon information and belief, Defendant Broan-NuTone, LLC (hereinafter, “Broan”) is a Wisconsin corporation with its principal place of business at 926 W. State Street, Hartford, WI 53027.

4. At all times relevant, Broan regularly conducted business in the Commonwealth of Pennsylvania and County of Montgomery, through its business of designing, manufacturing, selling, distributing, and marketing ceiling fans, ventilation fans and/or light fixtures, including the ceiling fan at issue in this case

5. Jurisdiction and venue are proper in the Montgomery County Court of Common Pleas, as Montgomery County, Pennsylvania, is the location of the real property at issue, and where the cause of action arose.

6. On or about April 23, 2019, a fire originated in the bathroom ceiling ventilation fan, manufactured by Broan, at the subject property.

7. As a result of the fire, Nationwide’s insured sustained severe fire, smoke and water damage to his real and personal property, and incurred related costs.

8. Pursuant to the policy of insurance, Mr. Saylor submitted a claim to Nationwide for the damages sustained. Under the terms and conditions of the insurance policy, Nationwide has and will paid to its insured an amount in excess of \$313,000.00, including a \$250.00 deductible incurred by the insured. Nationwide is now subrogated to the rights of its insureds and brings this claim by way of subrogation.

COUNT I - NEGLIGENCE

9. Plaintiff incorporates by reference paragraphs 1 through 8 above as though fully set forth herein at length.

10. The Broan ceiling fan was defective and caused the fire and damage to the Saylor property.

11. The aforementioned damages were the direct and proximate result of the negligence and carelessness of Broan, by and through its employees, agents, technicians, vendors, contractors, subcontractors, workmen and/or servants more specifically described as follows:

- a) failing to manufacture, assemble, sell, design, transfer, distribute, and/or market a properly functioning product;
- b) failing to properly inspect and/or test the fan and/or its component parts;
- c) failing to properly determine that the fan and/or its component parts were noncompliant with applicable standards;
- d) failing to provide safe and adequate warnings or instructions with the subject fan;
- e) manufacturing marketing distributing and/or selling the fan when Broan knew, or after reasonable investigation should have known, that the fan and/or its component parts would be inadequate for the reason(s) for which it was purchased;
- f) failing to design and/or manufacture the product in such a manner as to prevent a catastrophic failure;
- g) failing to adequately warn others of the dangers and/or hazardous conditions inherent with the product, including the potential that a fire could occur from the ordinary customer use of the fan; and/or
- h) violating the standard of care prescribed by the statute rules and regulations ordinances codes and/or customs applicable to this action.

12. As a direct and proximate result of the above referenced conduct, Plaintiff sustained damages in an amount in excess of \$313,000.00.

13. Defendant Broan is liable to Nationwide for the damages sustained by Saylor and reimbursed by Nationwide.

WHEREFORE, Plaintiff Nationwide Mutual Fire Insurance Company as subrogee of Michael Saylor demands Judgment in its favor and against Defendant Broan Nu-Tone, LLC, in an amount to be determined in excess of \$313,000.00 plus costs, interest, and attorney fees, and for such other relief as this Honorable Court shall deem appropriate under the circumstances.

COUNT II- STRICT LIABILITY

14. Plaintiff incorporates the allegations set forth in paragraphs 1 through 13 as though the same were set forth more fully herein at length.

15. At all times relevant hereto, Broan was engaged in the business of, manufacturing, selling, designing, distributing, and marketing ceiling ventilation fans, and, specifically did so with the fan at issue in this case.

16. Broan manufactured, marketed, distributed, tested and/or sold the subject fan in a defective condition, unreasonably dangerous to consumers.

17. Broan knew or should have known that the fan would, and did, reach Saylor without substantial change in the condition in which it was originally manufactured, distributed and sold.

18. Broan, through its agents, employees, technicians, vendors, contractors and/or servants, is strictly liable to Plaintiff for the following:

- a. designing, manufacturing, assembling, selling, transporting, distributing and marketing a fan that was defective;
- b. failing to exercise reasonable care in providing safe and adequate warnings and instructions with the fan;
- c. manufacturing, marketing, distributing and/or selling the fan when Defendant knew or should have known that the fan and/or its component parts were defective and dangerous; and
- d. failing to adequately warn consumers and others of the dangers and hazardous conditions resulting from its defective product.

19. As a direct and proximate cause of the defects, Plaintiff's insured sustained damage to his real and personal property and additional related costs and expenses.

20. Broan is liable to Nationwide for the damages sustained by Saylor and reimbursed by Nationwide.

WHEREFORE, Plaintiff Nationwide Mutual Fire Insurance Company as subrogee of Michael Saylor demands Judgment in its favor and against Defendant Broan Nu-Tone, LLC, in an amount to be determined in excess of \$313,000.00 plus costs, interest, and attorney fees, and for such other relief as this Honorable Court shall deem appropriate under the circumstances.

COUNT THREE – BREACH OF EXPRESS AND/OR IMPLIED WARRANTY

21. Plaintiff incorporates herein the averments set forth in paragraphs 1 through 20 above as though fully set forth herein at length.

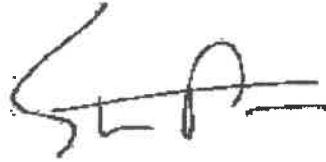
22. By manufacturing a fan and placing it into the stream of commerce, Defendant did warrant that it was free of dangerous defects and appropriate for its intended uses.

23. By providing a fan that did have a defect and dangerously malfunctioned, Defendant Broan did breach such warranties.

24. As a direct and proximate cause of the breach of warranties, Saylor sustained damage to his real and personal property and additional related costs and expenses.

WHEREFORE, Plaintiff Nationwide Mutual Fire Insurance Company as subrogee of Michael Saylor demands Judgment in its favor and against Defendant Broan Nu-Tone, LLC, in an amount to be determined in excess of \$313,000.00 plus costs, interest, and attorney fees, and for such other relief as this Honorable Court shall deem appropriate under the circumstances.

LAW OFFICE OF DONNA M. DIPIETRO

A handwritten signature in black ink, appearing to read 'SLA' with a horizontal line extending from the end.

BY: _____
STEVEN J. PAYNE, ESQUIRE
Attorney for Plaintiff

VERIFICATION

Rita M. Dattilo, hereby verifies that she is a representative for Nationwide Mutual Fire Insurance Company, that as such he is authorized to take this Verification on its behalf, and that the facts set forth in the foregoing Complaint are true and correct to the best of her knowledge, information and belief. The undersigned further understands that the statements made herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Rita Dattilo

Rita M. Dattilo, Claims Specialist III
Nationwide Mutual Fire Insurance Company